

Civil Procedure § 2, Fall 2012
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Course Policies and Expectations

Welcome to Civil Procedure! I'm very much looking forward to working with and getting to know all of you throughout the semester. We're going to cover a lot of ground, and hopefully we'll have some fun along the way. This document outlines our standard operating procedure throughout the semester. Please read it carefully before our first class so you can be familiar with how things will run. A couple of notes at the outset about the course:

First, this is a tough subject for which, perhaps unlike some of your other classes, you may not have much of a frame of reference. Moreover, we'll be covering a diverse set of topics that may not seem to fit together naturally until we reach the end of the class. Don't let this be a cause for worry. Civil procedure is a bit like a clock, and we'll make our way through it gear by gear. As you see more of the pieces, you'll start to understand better how the clock works. I'll do my best to situate us every day and make things no more complicated than they need to be.

Second, at my first law-school class (Civil Procedure, as it happens), my professor told us that it was the first day of our professional careers and that he expected that we would treat one another like professionals (if not dress like them). To me, that means maintaining a class atmosphere where we respect others' viewpoints and are open to playing with all sorts of ideas, even ones you may, at least at first blush, vehemently disagree with. That sort of openness is critical to a good class, and I hope you'll help set the tone.

Now, some specifics:

I. Required Texts

There are three required texts for this course, which I expect that you will bring to class each day: (1) Hazard, et al., Pleading and Procedure, 10th ed. (the "casebook"), (2) the 2012 "Supplement" to the casebook (this slim volume includes the most recent Supreme Court cases on procedure, which have come out since the last edition of the casebook), and (3) Clermont, Federal Rules of Civil Procedure 2012 (the "rulebook"). I expect that you will acquire current editions of each of these books so that we can all, literally, be on the same page.

II. Assignments

Assignments for this class may be found on the course syllabus, which will be distributed in several installments throughout the semester. Almost all of the readings will be from the required texts, though sometimes I will assign additional materials posted on the course website. Often, these materials will be actual court documents (e.g., a complaint, motion to dismiss, or discovery request). The purpose of assigning these documents is to give you a sense of what they look like, not to require you to master the substantive content therein.

With respect to assignments from the casebook, assume that the notes and questions following a case are required reading if I have assigned those pages (though occasionally I will tell you to pay particular attention to some notes and ignore others).

As this is a five-credit course, there is a fair bit of reading. Although the assignments are not long in terms of the number of pages (typically around 30 pages of reading per class, give or take), the materials are complicated and dense. I encourage you not to read ahead. Rather, take your time and walk methodically through the assigned cases. Ensure that for each case, you know who the parties were, what the dispute was about, what each side argued, and who won. You can't develop an informed opinion about a case until you understand what the court did and why. Once you're confident that you understand what happened in the case, turn then to forming an opinion about it.

Also, I strongly suggest that you read the cases with a Black's Law Dictionary by your side (whether the electronic Westlaw or portable abridged version). It's true in all your courses, but especially in procedure, that you'll be grappling with lots of new vocabulary. It will improve your comprehension of the cases to be able to look up the words you don't know, especially with respect to some of the older Supreme Court cases we'll encounter during the term.

Finally, I will usually email questions the night before a class for you to consider after reading the assignment as a jumping-off point for our discussion.

III. Outline of Subjects

Although I will distribute the syllabus in multiple installments throughout the semester, you should expect that we will cover the following topics: Due Process, Personal/Territorial Jurisdiction, Subject-Matter Jurisdiction, Venue, the Governing Law in the Federal Courts (*Erie*), Pleading, Joinder, Discovery, Pretrial Adjudication/Summary Judgment, Trial, Preclusion, and Class Actions.

IV. Class Meetings

We will normally meet on Mondays, Tuesdays, and Thursdays from 3:35—5:00 in Room 100. Please arrive on time and turn off any mobile devices. For my part, I'll do my best to end each class on time. Audio taping of the class without my permission is prohibited.

Three times during the semester we will not have class due to a holiday (Labor Day (9/3), Veterans Day (11/12), and Thanksgiving (11/22)). Additionally, I will be out of town Tuesday, November 13, and must cancel class that day. Those four classes will be made up at the following dates and times: (1) Fri., Oct. 12, at 1:00, (2) Fri., Oct. 19, at 1:00, (3) Wed., Nov. 28 at 3:35, and (4) Thu., Nov. 29, at 3:35. All make-up sessions will take place in Room 100.

V. Class Attendance and Preparation

Attendance for the course is mandatory, and I expect you to come each day prepared to participate. I call on students at each class meeting to contribute to our discussion of the material. Don't let this freak you out—the rule in this class is that it is fine to give a “wrong” answer so long as you are prepared and are making a good-faith effort. Legal education is a collaborative enterprise—we're all working together to understand exceptionally challenging material. Mistakes are understandable and often illuminating. My expectation is that you'll come to each class having read the material and that you're sufficiently prepared to contribute to the discussion.

Occasionally, of course, life intervenes, and you might not be prepared on a given day. You should not skip class on such occasions. Instead, on such an occasion, email me **before noon on the day of the class meeting** to let me know so I can plan not to

call on you, no questions asked (literally). One note, though: please don't abuse this privilege. You're all professionals now and should understand what is an acceptable reason to be unprepared (e.g., illness, personal or family issues, etc.), and what is not (e.g., assignments for other courses, extracurricular obligations, etc.). Also, if you're invoking this privilege often, I'll get concerned and will check in with you to make sure all is well. For your grade, class participation will be taken into account only to break any ties that must be broken according to Berkeley's grading system.

VI. Laptop Policy

The question of whether to allow laptops in class has caused significant consternation in the legal academy. I am somewhat persuaded by the arguments that laptops harm the classroom environment, in part because students' use of the Internet during class distracts other students, but mostly because I fear it encourages transcription of the class discussion rather than engagement in it.

Nevertheless, I recognize that there are some advantages to using a laptop to take notes, so I allow them. But I ask you sincerely not to make me regret it. As an element of the mutual respect we owe one another in this enterprise, please avoid any use of your laptop that is likely to prove distracting to your classmates (e.g., surfing the web, playing games, chatting). You may want to turn your wireless off during class if it helps you resist the temptation.

If you choose to use a laptop, I strongly encourage you to resist the urge to take down every word of what's said in class. Part of what the classroom discussion is supposed to do is hone your sense of what legal arguments are sound and what aspects of the material are most important. Simply transcribing the class does not serve those goals.

VII. Office Hours

I will hold office hours every week on Wednesdays from 3:40—6:40 in my office, 885 Simon Hall. (Occasionally, I might need to reschedule, in which case I'll let you know well in advance.) I generally schedule office hours in 20-minute appointments, and there's a sign-up sheet on my door. You are also welcome to sign up for office-hours slots in small groups, if you'd prefer, but please also respect that some students prefer to meet with me one-on-one. I

encourage you to come by if you're confused by the material, want to continue a discussion we started in class, or just want to talk. If you need any accommodations related to religious observance, disability, or any other personal or family issue, please feel free to come discuss the issue with me.

VIII. Final Examination

The final examination will be an in-class examination and it will count for 100 percent of your grade. The examination will be "limited open book," which means that you can use your Casebook and supplement, Rulebook, and any other materials that you have prepared. You will not be able to access anything electronically, so if you want to use additional materials that you have crafted, you must bring hard copies. No commercial outlines or "hornbooks" will be allowed. I'll discuss the exam in greater detail at the appropriate time later in the semester—it should not concern you now. The best way to ultimately be prepared for the exam is to stay focused on staying current with the reading.

One final note: Civil Procedure is a complicated subject. It's perfectly natural to feel confused at times. That's because this material is often confusing. Many lawyers, policymakers, and scholars make a living by engaging with complex and unresolved questions of procedure. That's because there are many such difficult questions. But mastery is rewarding, both in terms of intellectual satisfaction and the ability you'll have to better advocate on behalf of your clients. My best advice is to try to get a sense for why we're studying the doctrines and reading the cases we do every day, and to stay current with the reading. With patience and effort, you can all master this material, and I'm committed to helping you make progress to that goal.